IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 58 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SARABHAI CHEMICALS PVT LTD

Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 58 of 1989

MR RK PATEL for Petitioner No. 1

MR BB NAIK with MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 16/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

Mr. B.B. Naik makes a specific request that since the reference is pending for the last 12 years and more particularly since the controversy raised in this reference is concluded by a decision of this Court, this Bench may take up this matter for final disposal, notwithstanding the fact that one of us (Mr Justice D.A. Mehta) had appeared for the assessee at the hearing of the appeal before the Tribunal.

2. In this reference at the instance of the assessee, the following question is referred for the opinion of this Court in respect of assessment year 1976-77:-

"Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the assessee had violated the provisions of sec. 34(3)(b) of the Act of 1961 and was thus, not entitled to relief of development rebate amounting to Rs.2,77,807/- even though the entire industrial undertaking and business had been transferred as a going concern and not any specific plant or machinery?"

3. We have heard Mr RK Patel learned counsel for the assessee, and Mr BB Naik learned counsel for the revenue.

4. Our attention has been drawn to the decision of this Court in Kalindi Investment P. Ltd. vs.CIT (1995) 213 ITR 207 wherein this Court considered this question of law and held that the scheme of sections 33 and 34 of the Income-tax Act, 1961 reveals that the benefit of deduction is annexed to the ownership of the asset and not with the undertaking. Keeping in view the objective behind the benefit of development rebate made available to an assessee, the language of the statute leaves no room for doubt that if a person who acquires a new asset and avails of the benefit of deduction of development rebate after fulfilling the conditions for availing thereof is unable to retain that asset for the specified period for any reason, he is also not entitled to retain the benefit of reduced taxability relatable to the said asset on account of development rebate under section 33 of the Income-tax Act, 1961. The transferee of such used asset is not entitled to any development rebate under the provisions of the Act. The exceptions wherein the acquirer has been allowed to retain the benefit of the development rebate have been carved out under sub-sections (3) and (4) of section 33.

5. Since in the facts of this case, neither of the exceptions is invoked, our answer to the question is in the affirmative i.e. in favour of the revenue and against the assessee.

6. The Reference accordingly stands disposed of with no order as to costs.

(M.S. Shah,J)

(D.A. Mehta,J)

zgs/-